



The Commonwealth of Massachusetts

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SECRETARY

October 18, 2006

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Scotland Heights I & II
PROJECT MUNICIPALITY : Haverhill
PROJECT WATERSHED : Merrimack River
EOEA NUMBER : 13822
PROJECT PROPONENT : Scotland Heights Realty Trust
DATE NOTICED IN MONITOR : September 11, 2006

As Secretary of Environmental Affairs, I hereby determine that the Draft Environmental Impact Report (DEIR) submitted on this project **adequately and properly complies** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). The proponent may prepare and submit for review a Final Environmental Impact Report (FEIR).

Project Description

As described in the Expanded Environmental Notification Form (EENF) and the DEIR, the proposed project consists of two subdivisions known as Scotland Heights I and Scotland Heights II. Scotland Heights I is a 42-lot single family home subdivision and Scotland Heights II is a 41-lot single family subdivision. Each subdivision was proposed and permitted locally under separate applications, as the land developed as part of Scotland Heights II was made available through bankruptcy proceedings subsequent to the local approval of Scotland Heights I.

Despite being subject to a mandatory EIR requirement, Scotland Heights I is now fully constructed and occupied, and Scotland Heights II is an active construction site and approximately 60% complete. The MEPA review commenced subsequent to the direction of State permitting agencies, who cannot issue "after the fact" permits without the completion of

the MEPA process. The project has been subject to several local enforcement actions under the Wetlands Protection Act, and is currently subject to a Massachusetts Department of Environmental Protection Unilateral Administrative Order ("Order") (UAO-NE-06-9002-13). This Order was issued on July 6, 2006 to Scotland Heights Realty in association with ongoing discharges of wastewater from the project site without appropriate permitting documents. An Administrative Consent Order with Penalty (ACOP) was executed for the project on July 28, 2006.

The project includes the construction of several subdivision roadways (Blye Road, Snow Road, Scotland Heights Road and Tersolo Road), installation of water and sewer mains, alteration of 14,269 square feet (sf) of isolated wetlands (IVWs), alteration of 373 sf of bordering vegetated wetlands (BVWs), and the construction of stormwater management basins. The 87.8 acre property is located in a residential area of Haverhill, proximate to the Methuen Town Line, the Merrimack River, and wooded open space. Potential environmental impacts are associated with the alteration of approximately 48 acres of land, creation of 12 acres of impervious surfaces, use of 34,238 gallons per day (gpd) of water and generation of 27,390 gpd of wastewater. The project site is characterized by steep grade changes, portions of which have been altered as part of the initial construction of the subdivision. It appears that the project site was previously wooded in nature with some wetland areas interspersed throughout in low-lying areas prior to construction.

MEPA Jurisdiction and Permitting Requirements

This project is undergoing MEPA review and is subject to the preparation of a mandatory EIR pursuant to Section 11.03(1)(a)(2) because it requires a state permit and will create more than 10 acres of impervious surfaces. The project is also subject to MEPA review as it will alter more than 5,000 square feet of isolated vegetated wetlands (301 CMR 11.03(3)(b)(1)(d)). The project requires a Sewer Connection Permit and a 401 Water Quality Certification (WQC) from the Massachusetts Department of Environmental Protection (MassDEP), an Army Corps of Engineers Category II Programmatic General Permit, a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from U.S. Environmental Protection Agency (U.S. EPA), and an Order of Conditions from the Haverhill Conservation Commission. As the project proponent is not seeking public funding for this development, MEPA jurisdiction is limited to the subject matter of required or potentially required state permits. This includes stormwater, land alteration, wastewater, and wetlands.

Review of the DEIR

The DEIR included a description of both phases of the project, Scotland Heights I and Scotland Heights II, and presented additional information about previous conditions and proposed conditions. The DEIR also included an update on permitting, construction sequencing, erosion and sedimentation control measures, and a revised Preferred/Reduced Build Alternative that appears to lessen environmental impacts through a modified grading plan and stormwater management / wetland replication plan. Draft Section 61 Findings were included, however they should be clarified and updated as part of the FEIR.

The DEIR included a historical timeline of each project component, a proposed conditions plan that clearly identified potential impact areas (wetlands, retaining walls, utilities, stormwater management structures and finished grades). These proposed conditions plans have been modified from those presented in the ENF to reflect the revised Preferred Alternative. The DEIR provided a history and status of each pending or approved permit, and detailed the applicability of local or regional land use plans. The DEIR also included an extensive Operations and Maintenance Plan associated with its NPDES permit which outlines Best Management Practices (BMPs) during and after the construction period associated with stormwater runoff. General construction period impacts were also addressed primarily through this Operation and Maintenance Plan.

The Preferred Alternative presented in the DEIR reduces land alteration impacts through a reduction in land clearing and grading, as well as wetland impacts. Additionally, in an effort to respond to DEP's comment on the ENF, the Preferred Alternative has modified the conveyance and containment system for stormwater runoff to try to comply with stormwater performance standards. This included the reconfiguration of Pond 1 to treat stormwater via construction of a vegetated treatment swale located within the existing footprint of Pond 1.

I am concerned that the DEIR does not adequately address several of the issues previously identified by MassDEP or the Secretary's Certificate on the ENF, including: evaluation of a No-Build Alternative, the location of wetland replication areas in alternative locations within the Subject Property, or compliance with certain stormwater management performance standards. However, an EIR may be determined adequate even if certain aspects of the Project or issues require additional description or analysis in a final EIR, provided that the EIR is generally responsive to the Scope. Although the proponent must address certain significant issues in the FEIR, I find that the DEIR does meet the regulatory standard for adequacy. I direct the proponent to consult with MassDEP prior to filing the FEIR and ensure that the FEIR clearly address MassDEP's concerns. The Scope included below summarizes the issues that should be addressed.

Scope for the FEIR

Project Description and Permitting

The FEIR should be prepared in accordance with 301 CMR 11.07. The FEIR need not be a stand alone document that meets all of the form and content requirements for an EIR in accordance with 301 CMR 11.07(6); however, the applicant should present a complete and definitive description and analysis of the Project and its alternatives, address all questions raised by the MassDEP comment letter and items further defined in this scope, and update and finalize Section 61 findings.

The FEIR should provide supplemental information describing the existing environment in accordance with 301 CMR 11.07(6)(g). The FEIR should include a description of the project timetable, overall project cost, and the potential impacts of a delayed or prolonged construction period (particularly in relation to wetlands restoration and stormwater management during the interim construction period).

The FEIR should provide an update on any changes with the permitting process and discuss any requirements to file modified or amend existing permits due to changes in the Preferred Alternative.

Alternatives Analysis

While I recognize that portions of the project have already been completed, the purpose of quantifying and summarizing impacts associated with a No-Build Alternative is to establish a baseline with which to compare the Preferred Alternative. As stated in 301 CMR 11.07(6)(f)(2) and the EENF Certificate, the FEIR should include this description and analysis regardless of whether the project has been constructed. The proponent should evaluate a scenario in which no work was ever conducted on the property (i.e., circa 1995 conditions).

For both the No-Build Alternative and the Preferred Alternative, the FEIR should quantify the amount of land altered and impervious area created, the amount of stormwater conveyed, wastewater generation quantities, and other applicable areas of environmental impact. This information may be presented in a summary table format or supporting graphics. A brief analysis of differences between the two scenarios, along with a summary of environmental impacts, should be provided in the FEIR.

Land Alteration

The DEIR presented a new Preferred Alternative in which the limit of land alteration and vegetative clearing are reduced and supplemental meadow plantings are proposed. A reduction in land alteration will be achieved through changes to foundation heights and the provision of retaining walls downslope of home sites.

The FEIR should clarify when the limit of clearing will be staked to prevent inadvertent lot alteration within the Construction Sequencing Plan. The EENF scope requested a graphic depicting pre-development and post-development slopes and information regarding earth cut and fill estimates. The FEIR should include a summary of the amount of earth that must be imported or exported to accommodate the project and locations of deep cuts or fills. The FEIR should contain a graphic showing areas of the project site with pre and post-development slopes in excess of 10% and 20%, respectively.

Water Quality

The proponent should include a copy of the deed restriction to demonstrate compliance with the 401 WQC regulations to prevent further alteration of wetland resources as requested by MassDEP in their EENF comment letter.

The proponent should present an alternative location of Isolated Vegetated Wetland (IVW) replication areas in accordance with the MassDEP DEIR comment letter in a location further away from Pond 1. The FEIR should detail how such replication areas would meet WQC performance standards and how an alternative location for replication areas would impact areas of clearing, impervious surfaces, infrastructure, etc.

Wetlands

Under the revised Preferred Alternative, the proponent will alter approximately 14,269 sf of IVWs associated with Wetlands Series M, N and O. This alteration is less than the 15,111 previously proposed within the EENF (as indicated on Sheet C8 of the DEIR plans). The Preferred Alternative will consist of four (4) areas of IVWs, totaling 15,468 sf in area as mitigation for alteration of existing IVWs. The FEIR must clarify discrepancies within the DEIR text and plans that provide varying impact calculations to IVWs area (the text says 15,070 sf of IVW will be altered, plans state otherwise). Should the Preferred Alternative be modified in response to the MassDEP comment letter regarding wetland replication areas, the FEIR should include calculations and design plans detailing modified wetland areas.

Stormwater

The DEIR presented substantial changes to the stormwater design of Pond 1 in order to meet MassDEP Section 401 Water Quality Certificate performance standards for stormwater treatment and wetland replication. MassDEP continues to express concern regarding the capability of the stormwater management system to effectively convey and treat stormwater runoff in accordance with performance standards. The FEIR should directly address each concern raised by MassDEP with regards to stormwater management and provide revised design or supplemental materials to demonstrate compliance with MassDEP standards and effectively respond to comments.

Additionally, the proponent should discuss how the stormwater management system associated with Scotland Heights I meets Stormwater Management Policy standards (to the extent possible).

The Operations and Maintenance Plan (OM Plan) presented in the DEIR places substantial responsibility on the homeowner to limit water use, sweep driveways and utilize lawn fertilizers judiciously. The FEIR should outline what measures will be taken to educate or enforce these principles with homeowners.

Wastewater

MassDEP has requested additional information and/or clarification related to a variety of wastewater issues. The FEIR should provide discussion, correction or supplemental information to address each concern raised by MassDEP in their DEIR comment letter.

The FEIR should clarify the location of the sewer line and easement leading from Snow Road to Bradley Avenue across Lots 18-20. It is unclear from the plans included in the DEIR how the easement area relates to the stormwater management Pond 2 access driveway and how maintenance of the sewer line would be feasible given the construction of a rip rap slope for stabilization purposes.

The FEIR should also discuss measures taken within the project development to reduce wastewater flows and water use (i.e. low-flow toilets, watering restrictions, etc.).

Mitigation and Section 61

The FEIR should include a separate chapter on mitigation that includes a summary of all mitigation measures to which the proponent has committed. The FEIR should also include updated Section 61 Findings (including detailed mitigation commitments for the Sewer Connection, Water Quality Certificate and Order of Conditions) for use by the state permitting agencies.

Response to Comments

The FEIR should contain a copy of this Certificate and a copy of each comment received. The FEIR must present additional narrative and/or quantitative analysis necessary to respond to the comments received.

Circulation

The FEIR should be circulated in compliance with Section 11.16 of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals and to those who submitted comments on the EENF or DEIR. A copy of the FEIR should be made available for review at the Haverhill Public Library.

October 18, 2006

Date


Robert W. Golledge, Jr.

Comments Received:

10/11/06 Massachusetts Department of Environmental Protection - NERO

RWG/HSJ/hsj